# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO(MVA) No.429 of 2006.**

**Decided on : December 26,2007**

---

**New India Assurance Co. Ltd. …Appellant.**

**Versus**

**Sumna Devi and others. …Respondents.**

---

***Coram***

**The Hon'ble Mr. Justice V.K. Gupta, C.J.**

**Whether approved for reporting? Yes.**

**For the Appellant: Mr. K.D. Sood, Advocate, with**
**Mr. Sanjeev Sood, Advocate.**

**For the Respondents: Mr. Ajay Chandel, Advocate, for respondents No. 1 to 3.**

**Mr. R.R. Rahi, Advocate, for respondent No.4.**

---

**V.K. Gupta, C.J. (Oral).**

**This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the award passed on 16th September, 2006 by the learned Motor Accidents Claims Tribunal-II, Kangra at Dharamshala whereby, in terms of Section 140 of the said Act, the learned Tribunal has granted interim compensation of Rs.50,000/- in favour of respondents No.1 to 3 payable by the appellant.**

**After hearing the learned counsel for the parties and on perusal of the original record of the Tribunal, which was summoned by this Court, it is found that in reply to the main claim petition filed under Section 166 of the Motor Vehicles**

---

**Whether reporters of the local papers may be allowed to see the judgment?**

**Act as well as in reply to the claim petition filed under Section 140 of the Act, the appellant-insurer had taken a specific plea that the vehicle involved was not insured with it. Since in this case I am concerned only with the disposal of the application under Section 140 of the Act and the passing of the impugned award dated 16th September, 2006 for interim compensation, I reproduce hereinbelow (verbatim) para 3 of the reply filed by the appellant-insurer to the aforesaid Interim Compensation Application in the Claims Tribunal. It reads thus:-**

> **"3. That the contents of para 3 of the application are denied and the petitioners are required to prove the contents of this para with cogent evidence. The vehicle is not insured with the replying respondent as such the applicants are not entitled to claim from the replying respondent."**

**On 20th December, 2005, the Tribunal has framed six Issues in the main Claim Petition, issue No.5 out of those Issues reads thus:-**

> **"5. Whether the Maruti Car No.PB-08N 6858 was not insured at the relevant time, with the respondent No.2? …OPR-2"**

**Despite the Tribunal having framed the aforesaid Issue much before the passing of the impugned**

**award and despite the appellant-insurer having taken a specific plea that the vehicle in question was not insured with it, without taking into account the said aspect of the case and without at all dwelling in any manner with respect thereto, the Tribunal fastened the liability to pay the compensation amount upon the appellant-insurer. A bare glance at the impugned award suggests that the Tribunal did not at all consider whether the vehicle was insured with the appellant-insurer or not and if not as to how and under what circumstances was it burdening the appellant-insurer with the liability to pay the award amount to the claimants.**

**It is a well settled principle of law that unless the Tribunal is fully satisfied and convinced that the vehicle involved in the accident in fact and in deed is insured with the insurer, it cannot bind the insurer with any liability to pay the award amount.**

**Based on the aforesaid reasoning, this appeal is allowed. The impugned award is set aside. The Tribunal is directed to dispose of afresh Section 140 application after hearing the learned counsel for the parties and, in the light of the observations made hereinabove, after recording a clear and categorical finding as to whether the vehicle in question was or was not insured with the appellant-insurer. Depending upon the result of such finding, the consequences shall follow.**

**The record be sent back. The parties through their learned counsel are directed to appear before the learned Tribunal on 16th January, 2008. The learned Tribunal shall decide the application very very expeditiously.**

**The appeal is disposed of.**

**CMP No.1370 of 2006.**

**In view of the disposal of the appeal, this application is disposed of. Interim order dated 1st March, 2007 shall stand vsacated.**

**26th December, 2007.** **(V.K. Gupta), C.J.**

**(tr)**